IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.2232 OF 1991

The Municipal Corporation of the City)
of Pune, having its Head Office at e)
Shivaji Nagar, Pune-5.).. PETITIONER

Versus

1) Mrs.Anguri Devi Ved Prakash Agarwal)
aged 39 years, Occupation : Business)

2) Rajesh Ved Prakash Agarwal r)
aged about 21 years, Occ.: Business)

3) Mrs.Rajrani Suresh Agarwal)
aged 29 years, Occ.: Household)
All residents of 992-93, 16-A)
Rajendra Nagar, Pune 30.).. RESPONDENTS

Mr.R.M. Pethe with Mr.R.G. Ketkar for the Petitioner.

None present for the Respondents.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 1ST MARCH 2006

ORAL JUDGMENT :

. This Petition challenges the judgment and order dated 31st August 1990 passed by the Principal Judge, Small Causes Court, Pune in Municipal Appeal No.50 of 1989. The Appeal has been field under Section 406 of the Bombay Provincial Corporations Act, 1949 (hereinafter referred to as "the Act"). The Petitioner Corporation had issued notices for fixation of the rateable value in respect of the property of the

Respondents which is a show-room at Dandekar Pool, Parvati, Pune. The property admeasures 323 sq. ft. Notice regarding fixation of rateable value was served on the occupants of the premises. The Respondents were heard and thereafter the rateable value was fixed at Rs.5450/-. The Respondents paid the property tax at this rateable value which was fixed on 27th March 1987 upto 1989. It was only when the bill dated 30th May 1989 was raised by the Petitioner, that the Respondents challenged the same on 5th June 1989. The Respondents filed an Appeal being Municipal Appeal No.50 of 1989. The principal grounds for challenging the rateable value were that the Corporation had not followed the carpet area method nor considered the standard rent for fixing the rateable value. It was also alleged that the assessment was made without giving notice and a reasonable opportunity of being heard.

2. The Corporation opposed the Appeal by submitting in its Written Statement that the Appeal was not maintainable as the rateable value was being challenged almost three years after it was fixed. The Petitioner has filed several documents indicating that the Respondents had been given notice regarding fixation of the rateable value. The Respondents relied on the Valuer’s report which the Small Causes Court has considered in the impugned order. The Small Causes

Court has allowed the Appeal and directed the Petitioner to issue a fresh notice on the basis of rateable value at Rs.1880/- with effect from 1st April 1987. The Small Causes Court has taken into account the value estimated by the Valuer who has assessed the rateable value of the property on "the cost of construction" method. The Court has arrived at the conclusion that the rateable value should be Rs.1880/-. The Court has held that the Corporation had fixed the rateable value with retrospective effect from 11th November 1986, illegally.

3. The learned Advocate appearing for the Petitioner Corporation submits that the Appeal itself was not maintainable as it has not been filed within the period of limitation as set out under Section 406 of the Act. Besides, he contends, the other conditions stipulated in Section 406 have not been complied with by the Respondents prior to the filing of the Appeal. He then urges that the rateable value fixed by the learned Small Causes Court is on an erroneous basis. The Valuer’s report which has been considered as the basis by the learned Judge, does not take into account the value of the land which must be computed while fixing the rateable value. He, therefore, submits that the impugned judgment and order must be set aside and the rateable value fixed by the Corporation should be made payable.

4. A perusal of Section 406 of the Act indicates that an appeal against the rateable value fixed can be entertained, provided certain preconditions are fulfilled. An appeal must be preferred within fifteen days after the accrual of the cause of complaint. A prior complaint should have been made to the Commissioner as provided under the Act and the complaint ought to have been disposed off. In the present case, the rateable value was fixed by the Corporation on 27th March 1987 and not on 27th July 1987 as erroneously recorded by the Small Causes Court. The Appeal has been filed in the year 1989. Obviously, therefore, there is a delay in filing the Appeal. Apart from this, there is no application made for condoning the delay. Therefore, the Appeal is not maintainable. Moreover, there is nothing on record to indicate that the Respondents had filed a complaint before the Commissioner questioning the rateable value fixed by the Corporation. Since these stipulations have not been complied with by the Respondents, the Appeal itself was not maintainable.

5. Rateable value as defined under the Act, reads as follows :-

> "(54) "rateable value" means the value of any building or land fixed in accordance with the provisions of this Act and the rules for

the purpose of assessment to property taxes."

The value of the land must necessarily be included while fixing the rateable value. The Commissioner has taken into account the area occupied, cost of construction and the yearly rent and on that basis has fixed the rateable value.

6. The impugned judgment and order dated 31st August 1990 passed by the Principal Judge, Small Causes Court, Pune in Municipal Appeal No.50 of 1989 is set aside. Petition allowed. Rule made absolute accordingly. No order as to costs.